85-388

Supreme Court, U.S.
FILED
SEP 6 1985
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

LYNN JOHNSTON, Petitioner,

v.

CITY OF ANN ARBOR, CITY OF ANN ARBOR POLICE DEPARTMENT, BREWER'S TOWING SERVICE, AND S. J. ELDEN, P. G. V. THOMASSEN AND GEORGE ALEXANDER, JUDGES OF THE 15TH DISTRICT COURT OF MICHIGAN,

Respondents.

PETITON FOR WRIT TO CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Lynn Johnston
Box 2439
Ann Arbor, Mi 48106
313-761-6100

QUESTION PRESENTED FOR REVIEW

Is optional "compensation enhancement" of judges' salaries by a local political subdivision unconstitutional?

The lower courts, in effect, claim the answer is no. Petitioner claims the correct answer is yes.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

LYNN JOHNSTON, Petitoner,

v.

CITY OF ANN ARBOR, CITY OF ANN ARBOR POLICE DEPARTMENT, BREWER'S TOWING SERVICE, AND S.J. ELDEN, P.G.V. THOMASSEN AND GEORGE ALEXANDER, JUDGES OF THE 15TH DISTRICT COURT OF MICHIGAN.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NOW COMES Lynn Johnston above named Petitioner, to petition this Honorable Court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the 6th Circuit in this

case as entered on June 10, 1985. As grounds Petitioner Johnston respectfully shows the court as follows:

OPINIONS BELOW

The opinion/order of the US Court of Appeals for the 6th Circuit and the US District Court have not yet been reported; copies are set forth in the appendix.

JURISDICTION

The Order of the Court of Appeals was entered on June 10, 1985. The jurisdiction of this Court is invoked under (A) 28 USC 1254(1), which confers authority for this Court to review any lower court case upon the petition of any party; and (B) the First Amendment of the US Constitution which acknowledges the right of the people to seek redress of grievances by petition to governmental authorities. This petition is filed within the 90 days allowed by law.

APPLICABLE LAW

Michigan Constitution, Art. VI, Sec. 17

No judge or justice of any court of this State shall be paid from the fees of his office nor shall the amount

of his salary be measured by fees, other moneys recieved or the amount of judicial activity of his office.

Michigan Constitution, Art. XI, Sec. 3

Neither the legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer agent or contractor after the service has been rendered or the contract entered into.

Michigan General Court Rule 2.003(B)(1)&(2)

A judge is disqualified when the judge cannot impartially hear a case including proceedings in which the judge (1) is an interested party; (2) is personally biased or prejudiced for or against a party or attorney;

Resolution for Determining Local Salaries for 15th District Court Judges (Ann Arbor, July 2, 1984)

WHEREAS, The Revised Judicature Act, Sec.8202, permits local units of government to approve salaries to supplement the state salaries for district judges, provided that the total salary does not

exceed 88 per cent of the annual salary of a justice of the Supreme Court, and;

WHEREAS, the State of Michigan has approaved a salary increase for Distsrict Judges effective January 1, 1984 and the amount then permitted that the City of Ann Arbor can pay each District Judge is $28,490.00 and;

WHEREAS, the City Council desires that the 15th District Judge's salaries shall be maintained at the level provided by the Revised Judicature Act, Sec. 8202 unless otherwise changed by act of City Council;

NOW THEREFORE, BE IT RESOLVED by the Council for the City of Ann Arbor that, the local salary for each 15th District Court Judge shall be increased from $26,565.00 to 28,490.00, effective January 1, 1984, and shall be maintained at the 88% allowable under state law by the approaval of such amounts in the annual budget of the 15th District Court. (Mayor) July 2, 1984 (Emphasis added)

STATEMENT OF THE CASE

This matter has become known as the case of the

Orange VW which is a vehicle registered to an intra-state pilot but shared jointly by about a half dozen others (bailees). The use and maintenance of the car were such that the parties shared expenses of operation and use which occurred in numerous counties according to the convenience and flight requirements of the parties.

Prior to January 10, 1984 Respondents alleged that 6 or more "default judgments" issued from the City Treasurers Department [which simulated judicial process], and that they were mailed to the registered owner of the orange VW. Respondents allege that as a result, the car was subject to seizure and impoundment on sight, and was therefore seized and impounded on the afternoon of January 10, 1984.

The Respondents claim that the Parking Violations Bureau in the City Treasurers Department is part of the 15th District Court, and therefore when a parking violator does not respond to a parking ticket, the Treasurers Office can issue a default judgment which is, in effect, a judgment of the 15th District Court. This is the usual procedure and the one they

followed in this case. They claim that the Treasurers Department employee is also an employee of the 15th District Court which insofar as parking violations are concerned, joins the executive and judiciai branches of government into a single governmental body exercising the powers of both branches.

Petitoner, who is one of the bailees, was for that time period (January, 1984) entitled to the use of the orange VW. Petitioner claimed that seizure and impoundment deprived her of her right to the enjoyment of the vehicle in which she had a legitimate interest.

Although the registered owner was not immediately available, nor in the vicinity, Respondent City of Ann Arbor Police Department was willing to allow Petitioner to pay the "ticket and tow ransom" and release the orange VW to Petitioner without involvement or notification to the registered owner. They also offered the option to Petitioner of tendering the ticket and tow fee as a bond pending a "formal hearing" with petitoner as the defendant

while immediately releasing the car to Petitioner in any case if she would just give them the money. Petitioner was officially informed at the same time that if she elected to take Respondents' bond-hearing option (as had been done previously), Petitoner would be required to not only post the bond, but also file the complaint against herself with the 15th District Court Clerk. This act would have opened a case file in the judicial branch on the matter.

On January 20, 1984 (within 10 days of the above incident), as a result of not wanting to be again deprived of substantial constitutional rights and money at the hands of Respondents, Petitoner filed a federal civil rights suit and secured a temporary restraining order and a preliminary injunction halting the advertised sale at public auction of the orange VW. The suit alleged numerous constitutional violations in Respondents' pre-and post-impoundment "ticket and tow" revenue-generation scheme including denial of a republican form of government with its separation of powers and denial of trial by jury, warrantless seizure and

various other illegal operations of which the most insidous is here brought to the attention of this Honorable Court: the matter of the pecuninary interests of the 15th District Court Judges who try ordinary traffic cases (in the event one files the necessary complaint against oneself) and their on-going monetary interest in supporting thousands of convictions per year. The corrupt foundation stone upon which the whole expedient revenue scheme depends is judicial pecuninary interest.

The registered owner of the orange VW filed a formal notice in Petitoner 's civil rights case stating that he was willing to become a co-plaintiff with Petitioner, if the court deemed it necessary and he is still prepared to join Petitioner or be substituted for Petitioner should this Court so desire. The lower court found that Petitioner had sufficent standing; however, the 6th Circuit (affirming the lower court on its findings of sufficency of post-impoundment due process and lack of judicial pecuninary interest) was not decisive on the subject of the adequacy of Petitioner's standing. Nor did the 6th Circuit address

any pre-impoundment processes. Petitioner filed a timely petition for review with this Honorable Court.

ARGUMENT

Is optional compensation enhancement of judges' salaries by a local political subdivision unconstitutional?

The lower courts, in effect, claim the answer is no. Peititoner claims the correct answer is yes.

The parking ticket and tow revenue of Respondent City of Ann Arbor go into the General Fund (rather than a separate fund for the purpose of street maintenance and parking facilities). The record shows that it is a multi-million dollar revenue generation scheme yearly in a district known far and wide for excessively limited parking accommodations, poor meter maintenance and swift enforcement (see Exhibit 1 on page A1 from

Respondents' collection window which succinctly makes their posture clear to all). Respondent City, upon a conditon of a fat General Fund and by periodic resolution pays Rerspondent 15th District Court Judges an optional "salary enhancement" (retro-actively) out of the General Fund. The history of such "salary enhancemen" shows that it amounts to approximately a 1/3 increase over an already ample fixed state salary. As a practical matter, the City Council has the power to pay or not to pay this "salary enhancement", and every judge of the 15th District Court knows it. Each is also aware that such "salary enhancement" would not likely be forth coming if the General Fund is poor. Further, it is not unreasonable to argue that the City Fathers might not generously vote the judges any "salary enhancement" at all, if one of the judges made a ruling such that the lucrative ticketing and towing operation of the City ceased to add those very substantial revenues to the General Fund. 15th district court Judges are paid (via an optional "salary enhancement") from the fees collected by their office and the "enhancement",

gratutity or bribe is, more or less, determined or measured by the success of the ticket and tow scheme of collections; the only restsraint on the amount of payment being a state prohibition against district judges making more than 88% of what a supreme court judge makes. Furthermore, such salary enchancement, gratutity or bribe is paid or granted by the political subdivision of the City of Ann Arbor as an "extra compensation" to such judicial public officers after the service has been rendered which is also specifically prohibited by the state constitution. See the local Ann Arbor resolution for such a purpose on pages 4 and 5 herein. Each of these acts is specifically prohibited by the Michigan Constitution, Art. VI, sec. 17 and Art. XI, sec. 3. The Michigan General Court Rule number 2.003(B)(1)&(2) also prohibits judicial involvement in a case when a judge has an interest, bias or prejudice related to the outcome of the case. See page 4 for the text of such law.

Any legitimate regulation by the City of Ann Arbor of the streets should not be allowed to degenerate

into a slick excise tax on parked cars or a revenue-generation scheme for the financial benefit of the General Fund or the judges' pockets. Persons in the political subdivision of Annn Arbor have the right to reasonably use the streets. Moneys collected as a result of legitimate parking regulations should go toward maintenance of the roads, parking system, or for off-street parking facilities.

The 15th District Court Judges, by their rewarded interest for not looking too closely at the ticket and tow revenue collection scheme of Respondent City of Ann Arbor and by the advantage of suppressing various constitutional protections, facilate the collection of millions of dollars for the City of Ann Arbor's General Fund. The fatness of the General Fund is directly related to the amount of judicial enforcement activity supported and /or engaged in by Respondent 15th District Court Judges. Passing the judges cut through the General Fund (in amounts of over $100,000.00 per term of office, per judge) constitutes a multi-million dollar laundering operation in parking ticket revenues whereby the

parked public takes the bath.

Any potential litigator who would defend against or challege the ticket and/or tow scheme is forced to do so without a jury, without confronting the witnesses, and virtually without a prayer for success regardless of his innocence; and unless he pays the "ransom", the attempt would be without one's transportation also. The parking ticket is the most petty offence known to the law, but the 15th District Court Judges have denied almost every right imaginable and threatened would-be parking ticket litigators with incarceration (in violation of state law), and allowed the vehicles of the handicapped to be towed from the court parking lot while the handicapped victim attempted to litigate tickets. It appears that Respondent City of Ann Arbor has bought "judicial security" and financial security in its ticket and towing fund-rasing scheme for less than thrity thousand dollars a year per judge. Judicial pecuninary interest is the cornerstone upon which predictable consequent oppressions lie.

ARGUMENT CONCLUSION

This petition presents an opprotunity not only to correct the serious error and departure from state law of the lower courts, but also more importantly, to put an end to unlawful, corrupting pecuniary interest of the district court judges in Michgan.

WHEREFORE Petitioner suggests that what has been presented herin is so substantial an example of the departure from the accepted, usual course of impartial, unbiased judicial proceedings that this Honorable Court should not add its indifference to a pecuninarily interested judiciary to that of the lower courts on this issue. May a Writ of Certiorari please issue.

September 5th, 1985 Respectfully Submitted

Petitioner Johnston /s/_____

AFFIDAVIT

Lynn Johnston after being duly sworn, dpeoses and says that she served the required number of copies of this Petition for Certiorari upon the following persons by airmail by placing said documents into sealed packages with sufficent 1st class postage affixed thereon and depositing them into the US mails located in Red Bank, New Jersey on the 5th day of September, 1985:

Mel Laracey, Office of City Attorney, Box 8647, Ann Arbor, MI 48107; and Att. Jonathan Jaffa, 26899 Northwestern Hwy, Ste. 305, Southfield, MI 48034

/S/ _____

Petitioner Lynn Johnston, Box 2439, Ann Arbor, MI

Subscribed and sworn before me a Notary Public:

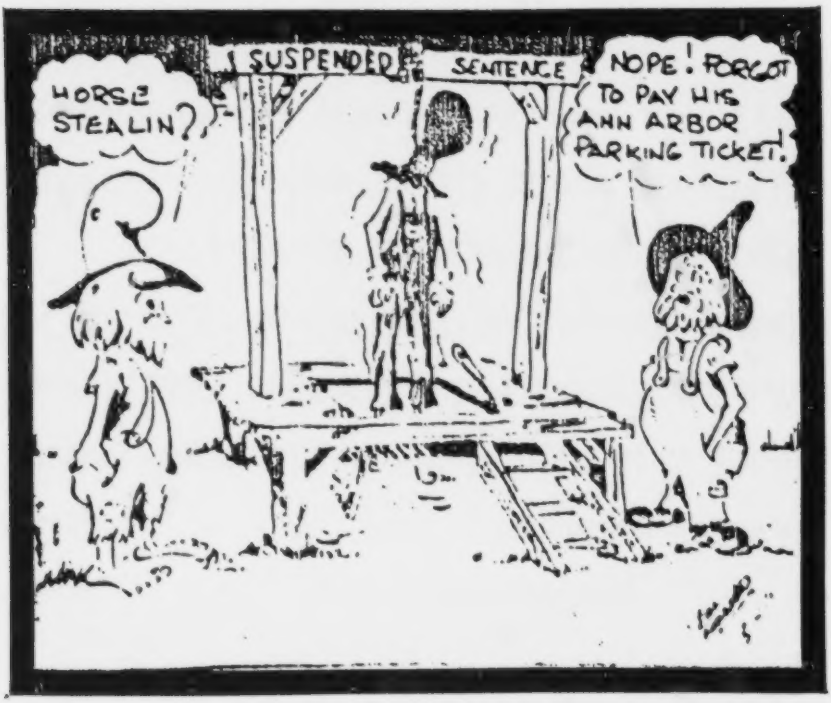
/S/ _____

(SEAL)

NOTARY PUBLIC STATE OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 18, 1986
CAROL A. MASSARO

APPENDIX

Exhibit 1 – Hanging Ann Arbor Parking Ticketees



(From the towed vehicle "Ransom" window of The City of Ann Arbor)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

LYNN JOHNSTON,

Plaintiff,

v.

Case No. 84 CV7043 AA

Hon. Charles Joiner

CITY OF ANN ARBOR, CITY OF ANN ARBOR POLICE DEPARTMENT, BREWER'S TOWING SERVICE, S.J. ELDEN, P.G.V. TOMASSEN, and GEORGE ALEXANDER, JUDGES OF THE FIFTEENTH DISTRICT COURT OF THE STATE OF MICHIGAN,

DEFENDANTS.

FILED

Aug 31 12 59 PM '84

Clerk

U.S. Dist Court

East Dist. MICH.

DEFENDANT BREWER'S TOWING SERVICE,

MORE PROPERLY KNOWN AS BREWER'S NORTH

CAMPUS SUNOCO

JUDGMENT

Defendant BREWER'S TOWING SERVICE, more properly known as BREWER'S NORTH CAMPUS SUNOCO'S Motion for Summary Judgment having been granted on May 8, 1984;

IT IS ORDERED AND ADJUDGED that Plaintiff LYNN JOHNSTON take nothing, and Plaintiff's case is dismissed with prejudice and without costs as to Defendant BREWER'S TOWING SERVICE, more properly nown as

BREWER'S NORTH CAMPUS SUNOCO, only.

Approved as to Form

/S/ Hon. Charles Joiner

(Stamped) Robert A. Mossing

Clerk

By Deputy Clerk /S/ J. BIRDSAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LYNN JOHNSTON,
PLAINTIFF

v

CITY OF ANN ARBOR, CITY OF ANN ARBOR POLICE DEPARTMENT, and BREWER'S TOWING SERVICE, S.J. ELDEN, P.G.V. THOMASSEN, and GEORGE ALEXANDER, Judges of the Fifteenth District Court of the State of Michigan,
Defendants

No. 84CV7043AA
Hon. Charles W. Joiner

JUDGMENT

The motions to dismiss of Defendants City of Ann Arbor, City of Ann Arbor Police Department, S.J. Elden, P.G. V. Thomassen and George Alexander having come on for hearing before the Court, and the Honorable Charles W. Joiner presiding, and the issues

having been duly heard and resolved in orders dated June 26, 1984 and August 28, 1984;

IT IS ORDERED AND ADJUDGED that the Plaintiff take nothing and that the action is dismissed on the merits with prejudice.

Robert A. Mossing, Clerk
of the Court

By/S/ J.M. Birdsall
Deputy Clerk

Date: Aug 28 1984

Approved as to Form:

/S/ Charles W. Joiner
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

FILED

Aug 28 3 08 PM '84

Clerk

U.S. DIST. COURT

EAST.DIST. MICH.

LYNN JOHNSTON,

Plaintiff

v

CITY OF ANN ARBOR, CITY OF ANN ARBOR POLICE DEPARTMENT, and BREWER'S TOWING SERVICE, S. J. ELDEN, P. G. V. THOMASSEN, and GEORGE ALEXANDER, Judges of the Fifteenth District Court of the State of Michigan,

Defendants

No. 84 CV7043AA

Hon. Charles W. Joiner

ORDER

At a session of said Court held in the Federal Building, City of Ann Arbor, State of Michigan on the 28 day of August, 1984

The motion to dismiss of the City of Ann Arbor having come on for hearing before the Court, and the Court being fully advised in the premises;

NOW, THEREFORE, for the reasons stated in open Court, it is ordered that the final claim of Plaintiff's complaint, related to the pecuniary interests of the Fifteenth District Court Judges of the State of Michigan in securing convictions on City parking violations, be dismissed with prejudice.

/S/ Charles W. Joiner,
District Judge.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this dicision is reproduced.

No. 84-1699

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

LYNN JOHNSTON, Plaintiff-Appellant,	)	FILED
v.	)	JUN 10 1985
CITY OF ANN ARBOR; CITY OF ANN ARBOR POLICE DEPARTMENT; BREWER'S TOWING SERVICE; S.J. ELDEN; P.G.V. THOMASSEN; AND GEORGE ALEXANDER, Defendants-Appellees.	)	JOHN P. HEHMAN, CLERK
	)	ORDER

BEFORE; MERRITT and WELLFORD, Circuit Judges; and CELEBREZZE, Senior Circuit Judge

Johnston appeals pro se from the district court's judgment in favor of the defendants in this civil rights case. This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After an examination of the record and the briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Johnston is a resident of the city of Ann Arbor, Michigan. She sued the city, the police department, Brewer's Towing Service, and three state court judges. Her complaint alleges that she was the bailee of a motor vehicle which was impounded by the police because the owner had failed to pay numerous parking tickets. Johnston alleged that the towing of the vehicle without a prior hearing violated her due process rights. She also argued that the state court judges were baised because they received the proceeds from the parking tickets as part of their compensation.

The district court held that no hearing was required prior to the towing of the vehicle. The federal circuit courts that have considered this issue agree with the district court. Sutton v. City of Milwaukee, 672 F. 2d 644, 646 (7th Cir. 1982); Cokinos v. District of Columbia, 728 F.2d 502, 503 (D.C. Cir 1983); Breath v. Cronvich, 729 F.2d 1006, 1010-11 (5th Cir.), cert. denied, _____ U> S> ____, 105 S. Ct. 332 (1984); Goichman v. Rheuban Motors, Inc., 682 F. 2d 1320, 1324 (9th Cir. 1982). The city of Ann Arbor ordinances provide for a prompt hearing after the vehicle has been towed. So the district court was correct to conclude that there was no due process violation here.

The district court also held that the facts of this case regarding the compensation of the state court judges distinguish this case from Ward v. Village of Monroeville, 409 U.S. 57 (1972). We agree with the district court's conclusion. We also note that because Johnston was not the party liable for the parking tickets, she was not directly inured by any action of the judges and therefore may lack standing

to raise this issue. Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 261 (1977).

The judgment of the district court is affirmed under Rule 9 (d) (3), Rules of the Sixth Circuit, because the issues are not substantial and do not require oral argument.

ENTERED BY ORDER OF THE COURT

/S/ JOHN P. HEHMAN/CK

CLERK

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

LYNN JOHNSTON,

Plaintiff,

Docket Number

84-CV-7043-AA

CHARLES JOINER

(District Court Judge)

v.

CITY OF ANN ARBOR, ET AL

Defendants

NOTICE OF APPEAL

Notice is hereby given that Plaintiff appeals to the United States Court of Appeals for the Sixth Circuit from the (X) Judgements & (X) Order ( ) Other (specity) _____ entered in this action on (date) August 28, 1984

/S/ Lynn Johnston

(Counsel for Appellant)

Address Pro Se

Box 2439

Ann Arbor

Mich. 48106

Phone: 313 995-5440

Date Sept. 17, 1984